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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 RAUL RAMOS, JR., ) NO. CV 08-08070 JSL (SS)  
12 )  
13 Petitioner, ) ORDER ADOPTING FINDINGS,  
14 )  
15 v. ) CONCLUSIONS AND RECOMMENDATIONS  
16 EVANS, Warden, ) OF UNITED STATES MAGISTRATE JUDGE  
17 )  
18 Respondent. )  
19

20 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition,  
21 all of the records and files herein, the Magistrate Judge's Report and  
22 Recommendation, and Petitioner's Objections. After having made a de  
23 novo determination of the portions of the Report and Recommendation to  
24 which Objections were directed, the Court concurs with and adopts the  
25 findings, conclusions and recommendations of the Magistrate Judge.  
26 However, the Court addresses Petitioner's Objections below.

27 In his March 31, 2010 Objections to the Report, Petitioner argues  
28 that "the evidence was insufficient to show that he personally inflicted  
great bodily injury on the assault victim." (Objections at 9).

1 Petitioner concedes there "was evidence that [he] struck the victim  
2 during the group attack" and that the victim suffered serious injuries  
3 to his "eyes and face." (Id. at 9-10). Petitioner notes, however, that  
4 there was no evidence of "where on the victim's body [P]etitioner kicked  
5 and hit him." (Id. at 9). Petitioner argues that "[w]ithout evidence  
6 that [he] hit or kicked the victim in the head, the evidence was  
7 insufficient to show that [P]etitioner personally caused the victim's  
8 great bodily injury." (Id. at 10).

9  
10 In the Report, the Magistrate Judge relied on People v. Modiri, 39  
11 Cal. 4th 481, 46 Cal. Rptr. 3d 762 (2006), to recognize the state law  
12 standard for the level of participation required in a group attack to  
13 support an enhanced sentence under California Penal Code section 1192.7.  
14 (See Report and Recommendation ("R&R") at 21). Petitioner "does not  
15 dispute the Magistrate Judge's application of Modiri to his case," but  
16 argues that under Modiri, "[t]here must be an evidentiary link between  
17 the defendant's actions and the specific bodily harm that the victim  
18 suffered." (Objections at 9). Petitioner is correct that Modiri  
19 requires a "physical link between [the defendant's] act and the victim's  
20 injury." Modiri, 39 Cal. 4th at 495. However, Modiri holds that in the  
21 context of a group attack, the physical link is sufficient where a  
22 defendant "personally applie[s] force to the victim, and such force was  
23 sufficient to produce grievous bodily harm either alone or in concert  
24 with others." Id. at 497.

25  
26 Indeed, Modiri specifically rejects Petitioner's argument that  
27 there must be evidence showing that he inflicted blows on the specific  
28 part of the body where the victim was injured:

1 [T]hose who participate directly and substantially in a group  
2 beating should not be immune from a personal-infliction  
3 finding for the sole reason that the resulting confusion  
4 prevents a showing or determination of this kind. [¶]  
5 Defendant's contrary view would mean that only those whose  
6 foot could be traced to a particular kick, whose fist could be  
7 patterned to a certain blow or whose weapon could be aligned  
8 with a visible injury would be punished. The more severe the  
9 beating, the more difficult would be the tracing of  
10 culpability.

11  
12 Id. at 496-97 (internal quotation marks omitted). Because Modiri does  
13 not require the specific type of evidence Petitioner claims, his  
14 Objections do not demonstrate that the Report erred in its  
15 recommendation.

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17 Petitioner further argues that the Report misrepresented the  
18 evidence regarding whether Petitioner struck the victim around his head.  
19 (See Objections at 10). According to the Report, "[o]ne deputy  
20 testified at the preliminary hearing that he observed Petitioner kicking  
21 the victim and hitting him around the head." (R&R at 29) (citing CT  
22 167). Petitioner is correct that Deputy Capifali did not specify where  
23 on the victim's body he observed Petitioner landing blows. (See CT  
24 167). Deputy Capifali only testified that he observed Petitioner  
25 "hitting and kicking" the victim, (id.), and that the victim sustained  
26 serious injuries to his face and head. (See CT 169) ("[B]oth of his  
27 eyes were completely shut. He also had -- there was extensive swelling  
28 about his entire face. There was blood coming from inside the ear

1 canal. I believe it was his left ear, which suggests possible serious  
2 head trauma."). As explained above, however, Modiri does not require  
3 evidence that Petitioner specifically struck the victim around his head.  
4 Accordingly, Petitioner's Objections do not demonstrate that the Report  
5 erred in its recommendation.

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7 IT IS ORDERED THAT:

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9 1. The Petition is DENIED and Judgment shall be entered dismissing  
10 this action with prejudice.

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12 2. The Clerk shall serve copies of this Order and the Judgment  
13 herein by United States mail on counsel for Petitioner and counsel for  
14 Respondent.

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16 DATED: 5/5/10

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19 J. SPENCER LETTS  
20 UNITED STATES DISTRICT JUDGE  
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